AB 1784 and AB 1785 Bill Analysis

Assembly Bill 1784 (Wolk) and Assembly Bill 1785 (Frommer)
Lobbyist: Political Consulting Services and Conflict of Interest

Version: As amended, February 18, 2004
Status: Senate Elections Committee
Urgency measure (AB 1784 only)

Executive Summary
When introduced, these bills prohibited lobbyists who also provide campaign consulting services to legislators from lobbying those clients, and required disqualification of legislators who have been lobbied by their campaign consultants. As amended, the bills no longer require disqualification, but expand the prohibition on lobbyists to both contractual (consulting) and business (investment, employment, and other) relationships. A new provision in AB 1784 would require that agreements between legislative candidates and their campaign consultants that condition payment on the outcome of an election be disclosed in pre-election reports.

Recommendation
Staff recommends the Commission take no position on these bills at this time. Staff further recommends amendments to include updated language related to the contingency fee reporting provision, language shifting to the General Fund attorneys' fees and costs arising out of a successful legal challenge to the bill's provisions, and an appropriation to carry out the bill's requirements.

Summary
These bills would prohibit a lobbyist/lobbying firm from contacting an elected state officer for the purpose of influencing legislative or administrative action during the period that the lobbyist/lobbying firm has a contractual or business relationship, as defined, with the elected state officer. AB 1784 applies to statewide offices, PERS Board members, and members of the Board of Equalization. AB 1785 applies to legislators. Both bills would become effective January 1, 2005.

Specifically, AB 1784 and AB 1785 would:

- Require a lobbyist to notify the Secretary of State within 14 days of a contractual relationship with the controlled campaign committee of an elected state officer
- Require a lobbyist to notify the Secretary of State within 14 days of a business relationship with an elected state officer
- Prohibit a lobbyist from contacting an elected state officer during, and six months following, the period of time that any of the following persons has a contractual relationship with the elected state officer's controlled campaign committee:
  A. A lobbyist, or any business entity in which the lobbyist has a 3% or greater ownership interest or holds a position of management
  B. A lobbying firm, any person who has a whole or partial ownership interest in the lobbying firm, or any person who is an officer or employee of the lobbying firm

- Prohibit a lobbyist from contacting an elected state officer during the period of time that the lobbyist has a business relationship with the officer

The bills define a contractual relationship as:

- A contract or agreement between any of the persons listed above in (A) and (B) and the controlled campaign committee of an elected state officer which entitles the person to compensation of $1,000 or more per quarter, or $4,000 or more per year

The bills provide that a business relationship exists when:

- An elected state officer has a reportable economic interest of $1,000 or more in the lobbyist, lobbying firm, or any business entity in which the lobbyist has a 3% or greater ownership interest or is an officer or employee

A business relationship will be deemed terminated upon the disposal of the interest by the elected state officer, lobbyist, or lobbying firm. In the case of income, the relationship will be considered terminated 12 months after the income is received by the elected state officer.

In addition to the above provisions, AB 1784 would:

- Require a candidate for elective state office to report, prior to the election, a contract or agreement, entered into by the candidate or his controlled campaign committee, which includes a payment contingent upon the candidate's election to office. The purpose of this provision is to secure timely public disclosure of such agreements, and to ensure that any such payments be included in the candidate's total expenditures for purposes of the voluntary expenditure ceilings.

These bills would further the purposes of the Act—in particular, subdivision (b) of section 81002:

> The activities of lobbyists should be regulated and their finances disclosed *in order that improper influences will not be directed at public officials.* [Emphasis added.]

Background

These bills were precipitated by a series of incidents involving a successful Democratic campaign consultant who is also a registered lobbyist. Newspaper articles reported that the lobbyist threatened members of the Assembly with retribution when they next faced re-election unless they voted for a bill sponsored by one of the lobbyist's clients. The authors of these bills feel they are necessary to limit the influence that consultant/lobbyists may have, as well as the influence of lobbyists who may share certain business relationships with one or more legislators.

Analysis

A purpose of the Political Reform Act is to regulate the activities of lobbyists so that improper influences will not be directed at public officials. By prohibiting contact between lobbyists and officials engaged in a contractual or business relationship, this legislation furthers the purposes of the Act and addresses concerns that financial relationships between lobbyists and public officials may compromise the integrity of the legislative process.

Staff Concerns

Commission staff has expressed the following concerns regarding the bills:

- **Content of lobbyist notice to Secretary of State should be defined.** The bill does not specify the content of, and requirements for, the notice filed with the Secretary of State. Additional clarification is required to determine whether a current form can be amended or a new form will need to be developed. Additionally, it is recommended that the authors clarify whether this notice is intended to be available for electronic filing and whether the information must be posted on the Internet.
- **Definition of lobbyist "contact" with a state elected official could be clarified.** The bill prohibits a lobbyist from contacting an elected state official, "directly or through an agent," when certain conditions apply. Section 82039 and regulation 18239, however, use the term "direct communication" to define a lobbyist. The Commission may need to consider whether the "contact" prohibited by AB 1784 and AB 1785 is the same as "direct communication."
- **Possible exceptions to prohibited contact.** The authors may also wish to consider exceptions to the contact prohibited in the bill. For example, the author may want to address situations where the only attempts to influence elected state officers are in the form a form letter to all members of a given committee or house.
- **Definition of "controlled campaign committee" could be clarified.** The bill's definition of a contractual relationship includes the term, "controlled campaign committee." Although section 82016 defines a "controlled committee," the term "controlled campaign committee" is not used in the Political Reform Act. The authors may want to define this term, thereby clarifying any intent to exclude candidate controlled ballot measure committees and committees formed for a local office from the provisions of the bills.
- **Definition of a contractual relationship could be modified.** The amount used to define a contractual relationship - $4,000 per year - could possibly be higher. Clarification of whether the $4,000 figure should be based on a calendar year or 12-month period is also required.
- **Contingency fee language in AB 1784 could be placed elsewhere in the Political Reform Act.** AB 1784 currently places the language regarding contingency fee agreements in new section 89518.5. Staff recommends that this language should instead be added to Chapter 4, either in section 84211 or a new section, and that it be amended as provided at the end of this analysis.
- **Suggested reporting of contingency fees requires too much detail.** The current design of the Form 460 does not accommodate the level of detail required by the bill's contingency fee language. Staff has drafted an amendment that would require information that can be directly entered onto the existing Form 460. (See attached amended language.)

Funding for Legal Challenges

The Commission may want to request language to deal with costs arising from litigation, in the event this enactment is challenged. In *Levine v. Fair Political Practices Commission*, 222 F. Supp. 2d 1182 (E.D. Calif. 2002), for instance, plaintiffs brought a successful motion for preliminary injunction against enforcement of certain statutory provisions regarding slate mailers. Although the Attorney General's Office may be available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorneys fees would be borne by our

agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

> If this section is successfully challenged, any attorneys' fees and costs shall be paid from the General Fund and the Commission's budget shall not be reduced accordingly.

Unfunded Costs

Each time a substantive new provision is added to the Political Reform Act, telephone and written advice requests and enforcement workload increase. It is estimated that these companion bills will give rise to approximately $50,000 in costs for regulatory implementation, telephone and written advice, and enforcement workload. The Commission is urged to seek reimbursement for these costs, as it is this layering of unfunded new programs that forces the agency to prioritize advice and enforcement workload and, ultimately, to abandon some workload.

Proposed Amendment to AB1784

Amend Section 89518.5 as follows:

If a candidate for elective state office or his or her controlled campaign committee enters into a contract or agreement that includes a payment that is contingent upon the election of the candidate to office, ~~that contract or agreement, including the date thereof, a description of the terms of the contract or agreement, and identification of all persons with whom the contract or agreement was made,~~ the payment shall be reported as an accrued expense owed by the candidate on the next campaign statement covering the reporting period during which the contract or agreement was made and on each subsequent campaign statement covering any period during which the ~~contract or agreement remained in effect~~ payment remains outstanding. The candidate shall report the payment separately from any other amounts owed to the payee and shall clearly identify the payment as an expense owed under a contingency agreement.